

§ 159.1 Conditions of contract.

(a) The form of contract (Form 5-462b)¹ for sale of irrigable lands specifically provides that the purchaser will obligate and pay on a per acre basis all irrigation charges assessed or to be assessed against the land purchased including accrued assessment, which accrued assessment shall be paid prior to the approval of the sale, and for the payment of the construction and operation and maintenance assessments on the due dates of each year. The agreement is to be acknowledged and recorded in the county records in which county the land is situated. The charges incidental to the recording of the instrument shall be paid by the purchaser at the time of executing the agreement.

(b) A strict compliance with the terms of paragraph (a) of this section is absolutely necessary and required.

(Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Interprets or applies sec. 1, 41 Stat. 409; 25 U.S.C. 386)

[22 FR 10566, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

NOTE: On May 12, 1921, Circular No. 1677, re sale of irrigable lands, was addressed to all superintendents. It was pointed out therein that the collection of irrigation construction charges was required by the terms of an act approved February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), and that in addition to the construction charge there was an operation and maintenance charge assessable annually that must be paid by the landowners benefited; furthermore, that the purpose of this circular was to point out to the superintendents the necessity of advising prospective purchasers that irrigation charges must be paid and that a so-called paid-up water right was not conveyed with the land. A form of agreement to be executed by the prospective purchaser accompanied this circular.

It has been brought to the attention of the Bureau that irrigation construction charges and operation and maintenance charges have accrued against irrigable allotments prior to the time of their being advertised for sale and that the superintendents have failed to provide for payment of the accrued irrigation charges, with the result that no means are apparent for their collection.

With a view of preventing any future misunderstanding the form of contract accompanying Circular No. 1677 has been redrafted

¹Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

and Form 5-462b assigned to it. The circular has been designated "No. 1677a."

PART 160—INCLUSION OF LIENS IN ALL PATENTS AND INSTRUMENTS EXECUTED

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160.1 Liens.

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160.3 Leases to include description of lands.

160.4 Prompt payment of irrigation charges by lessees.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385.

SOURCE: 22 FR 10566, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 160.1 Liens.

The act of March 7, 1928 (45 Stat. 210; 25 U.S.C. 387) creates a first lien against irrigable lands under all Indian irrigation projects where the construction, operation and maintenance costs of such projects remain unpaid and are reimbursable, and directs that such lien shall be recited in any patent or instrument issued for such lands to cover such unpaid charges. Prior to the enactment of this legislation similar liens had been created by legislative authority against irrigable lands of the projects on the Fort Yuma, Colorado River, and Gila River Reservations, in Arizona; Blackfeet, Fort Peck, Flathead, Fort Belknap, and Crow Reservations, Mont.; Wapato project, Yakima Reservation, Wash.; the irrigable lands on the Colville Reservation within the West Okanogan irrigation district, Washington, and the Fort Hall Reservation, Idaho. This legislation, therefore, extends protection similar to that existing in the legislation applicable to the projects on the reservations above mentioned.

CROSS REFERENCES: For operation and maintenance charges and construction costs, see parts 134 and 137 of this chapter.

§ 160.2 Instructions.

All superintendents and other officers are directed to familiarize themselves with this provision of law, and in all cases involving the issuance of patents or deeds direct to the Indian or purchaser of Indian allotments embracing irrigable lands, they will recite in

the papers forwarded to the Department for action the fact that the lands involved are within an irrigation project (giving the name) and accordingly are subject to the provisions of this law. This requirement will be in addition to the existing regulations requiring the superintendents in case of sales of irrigable lands to obtain from the project engineer a written statement relative to the irrigability of the lands to be sold, and whether or not there are any unpaid irrigation charges, together with the estimated per acre construction cost assessable against the land involved in the sale. Each sale will also be accompanied by contract executed in accordance with regulations obligating the purchaser to pay the accrued charges, namely, construction, operation, and maintenance, prior to the approval of the sale and to assume and pay the unassessed irrigation charges in accordance with regulations promulgated by the Secretary of the Interior.

CROSS REFERENCES: For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see part 159 and §§ 134.4 and 152.21 of this chapter.

§ 160.3 Leases to include description of lands.

It is important, also, for superintendents in leasing irrigable lands to present to the project engineer lists containing descriptions of the lands involved for his approval of the irrigable acreage and for checking as to whether or not such lands are in fact irrigable under existing works. Strict compliance with this section is required for the purpose of avoiding error.

§ 160.4 Prompt payment of irrigation charges by lessees.

Superintendents will also see that irrigation charges are promptly paid by lessees, and where such charges are not so paid take appropriate and prompt action for their collection. Such unpaid charges are a lien against the land, and accordingly any failure on the part of the superintendents to collect same increases the obligation against the land.

PART 162—LEASING AND PERMITTING

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- 162.19 Grazing units excepted.
- 162.20 San Xavier and Salt River Pima-Maricopa Reservations.

AUTHORITY: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 413, 415, 415a, 415b, 415c, 415d, 477, 635.

SOURCE: 26 FR 10966, Nov. 23, 1961, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 162.1 Definitions.

As used in this part:

(a) *Secretary* means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) *Individually owned land* means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.